

REMARKS/ARGUMENTS

The present Amendment is responsive to the final Office Action dated April 28, 2009. A Request For Continued Examination (RCE) is submitted herewith.

Claims 14-16 were rejected and claims 19 and 20 were objected to in the Action. Independent claim 14 and claim 15 depending therefrom are amended and no claims are added or cancelled herein. Therefore, claims 14-16, 19, and 20 remain pending in the present application. Support for amended claims 14 and 15 can be found in Applicants' originally filed disclosure. Thus, no new matter has been added herein. Applicants set forth the following remarks in response to the Action.

Applicants thank the Examiner for conducting a telephone interview with Applicants' undersigned attorney on July 13, 2009. The basis of the interview was to discuss the rejections of independent claim 14 (and other of the claims) of the present application in view of the teachings in U.S. Patent No. 6,712,819 to Zucherman *et al.* ("Zucherman"). As stated in the interview summary dated July 14, 2009, the interview included discussion of limitations that could be added to independent claim 14 to clearly define over the teachings of Zucherman in view of U.S. Pat. Pub. No. 2004/059343 to Shearer *et al.* ("Shearer"). Applicants have amended claim 14 herein to comport with the limitations outlined by the Examiner in the interview summary.

Turning to the Action, the Examiner rejected claims 14-16 under 35 U.S.C. § 103(a) as being unpatentable over Zucherman in view of Shearer. Independent claim 14 has been amended herein to require that the extendible and retractable holding pin of the apparatus have a distal end that is bent downwardly "perpendicular to the longitudinal axis of the shaft, the

distal end of the pin adapted to be received in an engagement hole of said orthopedic device, wherein the engagement hole has a longitudinal axis perpendicular to the longitudinal axis of the shaft." In contrast, the distal ends of holding pins 155 or 157 of the orthopedic device in Zucherman are not bent downwardly as is claimed in independent claim 14. See Figs. 3a-4c of *Zucherman*. Holding pins 155 or 157 may extend and retract somewhat from the shaft of the apparatus along a longitudinal axis thereof; however, the distal ends of these holding pins have a longitudinal axis that is either parallel to the longitudinal axis of the apparatus (i.e. pin 157) or co-axial thereto (i.e. pin 155), and are therefore not perpendicular as required by amended independent claim 14. While there are pins that extend in a perpendicular fashion from the shaft of the apparatus in *Zucherman* (for instance, pins 160), these pins are integral with distal end portion 147 of the apparatus and are not retractable and extendable as claimed in independent claim 14.

Further, independent claim 14 has also been amended to recite that the downwardly bent distal end of the holding pin is adapted to be received in an engagement hole of the orthopedic device, wherein the engagement hole has a longitudinal axis perpendicular to the longitudinal axis of the shaft. In contrast, any structure that could be considered an engagement hole of an orthopedic device in *Zucherman* has a longitudinal axis that is once again parallel with pins 155 and 157 and not perpendicular thereto. In the Action, the Examiner cited *Shearer* for teaching a shaft having a spring internally located in the shaft to deliver a prosthesis, and thus, the teaching of *Shearer* cannot be used to cure the deficiencies of *Zucherman*. Therefore, even the combination of those two references fails to teach each of the limitations of independent claim 14, as amended.

For the foregoing reasons, Applicants respectfully submit that amended claim 14 overcomes the outstanding rejections. Claims 15, 16, 19, and 20 likewise overcome the rejections because of, *inter alia*, their dependence from claim 14, or an intervening claim. Therefore, in view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 28, 2009

Respectfully submitted,

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